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SUBJECT: NO LEGAL GROUNDS FOR OPPOSITION REFERENDUM

1. (U) Sensitive but unclassified. Please protect accordingly.

SUMMARY

2. (SBU) Opposition leaders have made a national referendum of confidence on President Kocharian one of their key demands during their anti-government demonstrations of the past month. The Constitutional Court first raised the idea following the disputed 2003 elections; the government, however, rightly contends that such a referendum would be unconstitutional. Opposition leaders have dodged questions regarding the legality of the proposal. End Summary.

CONSTITUTIONAL COURT PROVIDES OPPOSITION AN OPENING

3. (SBU) The Constitutional Court first presented the idea of a national referendum on the presidential administration as a comment on its April 2003 decision on the Armenian presidential elections. The Court, in affirming Kocharian's legitimacy and the validity of the election results, made a non-binding suggestion that a national referendum on the government's legitimacy could be held. The Court Chairman, Gagik Harutunian, noted at the time that no provision in Armenian law or Constitution permitted the holding of a "Referendum of Confidence." Opposition deputies placed the issue of the referendum on the National Assembly's agenda during its Fall 2003 session. When the governing coalition refused to consider the measure for the Spring 2004 session, opposition deputies walked out of the chamber February 2, 2004 and initiated a boycott of parliamentary sessions.

NO ROOM FOR REFERENDUM IN CONSTITUTION?

4. (SBU) The Kocharian administration and the governing coalition contend that the concept of a "Referendum of Confidence" runs contrary to explicit provisions of the Armenian Constitution of 1995. The Constitution states that referenda are required to amend the Constitution and may be held at the discretion of the president or parliament on certain laws. The Constitution does not mention the use of referenda for other purposes. The Constitution also provides for a detailed process of removing the President from office for "state treason or other serious crimes." The process to impeach and remove from office (a majority vote of the National Assembly to impeach followed by a formal finding by the Constitutional Court followed by a second vote in the National Assembly) does not include a national referendum. (Note: The 1991 "Law on Referenda" permits a broader scope for national referenda, but the subsequent 1995 Constitution states, "The Constitution of the Republic has the highest legal force... Laws found to contradict the Constitution as well as other legal acts found to contradict the Constitution and the law have no legal force." The provisions of the 1991 law that contradict the constitution are thus not valid. End Note.)

OPPOSITION ON SHAKY GROUND

5. (SBU) The opposition deputy who drafted the proposal for the "Referendum of Confidence" told us that some constitutional grounds for the referendum exist. He pointed to Article 2 of the Constitution that states, "The people exercise their authority through free elections and referenda," arguing that the provision permits a wider scope for referenda. The same deputy, however, conceded that the Constitution seemingly did not provide room for a referendum of confidence. He told a National Democratic Institute representative

that the opposition really wanted the National Assembly to simply debate the referendum, recognizing that the government coalition would vote it down anyway. He said that he believed that the Constitutional Court had unintentionally created an opening for the opposition to exploit. Armenian People's Party leader Stepan Demirchian has also dodged questions about the proposed referendum's constitutionality, noting last week that the government's "illegal arrests and rigged elections" were also unconstitutional.

COMMENT: WITHOUT AMENDMENT, REFERENDUM EXTRA-LEGAL

16. (SBU) Though some have pointed to the national referendum of confidence as a means to resolve the current political impasse between the administration and the opposition, such a move would not only be unprecedented, but extra-legal. We agree that the Armenian Constitution makes no provision for such an extraordinary referendum. In order for a referendum of confidence to have legal standing, the National Assembly would have to first give its consent for the necessary amendment, which itself must be put forward as a national referendum. The Constitutional Court did seemingly step outside of its bounds in advancing the idea last year, but the court's judges' subsequent statements indicate that they did not foresee the consequences of their non-binding suggestion. For their part, opposition leaders have been willing to accept the court's political gift, and have used the government's refusal to call the measure to a parliamentary vote as further fuel for their anti-Kocharian campaign. To date, however, the opposition has not introduced the necessary pre-requisite constitutional amendment that would give legal standing to a referendum.

ORDWAY